

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DION SPRINGLE,

Defendant-Appellant.

UNPUBLISHED

January 20, 2005

No. 250900

Wayne Circuit Court

LC No. 03-005552-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced, as a habitual offender, third offense, MCL 769.11, to eighteen months to ninety-six months' imprisonment for the felonious assault and felon in possession convictions, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

On December 2, 2002, the complainant, Ronald Thompson, was released from Jackson prison on parole. The complainant had a child with Elaine Thompkins Springle, defendant's wife. He testified that she agreed to provide a residence for him at 17124 Detroit Street, located in the City of Detroit, upon his release from prison. The complainant testified that he had picked out the home with Elaine and helped her financially to obtain the home. It was complainant's intention, upon his release from prison, to live at that residence with their daughter, Elaine's other children, and nieces and nephews. The complainant reported to his parole officer at 2:30 p.m., then telephoned Elaine to come pick him up.

Elaine arrived at the Cass parole office with their daughter, Jacqueline Greer (nicknamed "Quetta"), Shareka Thompkins,¹ Elaine's other daughter, and Whitney Moore,² Elaine's

¹ The complainant identified this individual as "Tress," whereas Elaine referred to her as Shareka.

² In the record, this individual is referenced as "Whitney" and "Whitley." For consistency purposes, we will use "Whitney."

goddaughter. The complainant wanted to visit with his mother and was given approval by his parole officer to meet her at a specific time. Elaine, Quetta, Whitney, and Shareka did not accompany him on his visit to his mother's home and got out of the car. After the visit, the complainant proceeded to the home on Detroit Street. The complainant testified that he had lived with Elaine for different periods of time since March 2001. Although complainant heard rumors that Elaine was married to another man, his research at the city clerk's office caused him to conclude that she was not married.

The complainant arrived at the Detroit Street home and was greeted by all of the children. He was upstairs with a niece when he heard arguing downstairs between Elaine and another man, defendant, Elaine's husband. He observed defendant and Elaine struggling with a shotgun. The complainant had spoken to defendant on the telephone. Defendant had threatened the complainant in the past. Specifically, when the complainant telephoned Elaine, defendant told the complainant that he knew where the complainant's mother lived and if the complainant came to the home, he would leave in a body bag.

The complainant heard Elaine say, "not here with the kids," then he heard the gunfire. Elaine said, "you shot me." The complainant came to the landing, and defendant told him to leave. Defendant began to fire the shotgun at the complainant, but the shots hit the wall. The complainant began to run in a circular pattern to avoid being shot. Children in the home also had to flee from defendant. The complainant decided to stop running in a circle, confronted defendant, and grabbed the barrel of the gun. The men began to wrestle over the gun for five to ten minutes. Elaine and Quetta managed to intervene, and Quetta obtained the gun. The complainant began to punch defendant in the face. Elaine came between the men. Defendant grabbed a knife from the sink and ran out the door. Elaine ran after him, and the complainant's nephew telephoned police. When the police arrived, the children gave statements to them. Elaine came back to the home, and she accompanied the complainant to the hospital. The complainant was treated for a gunshot wound to the back of his leg. After the shooting, he returned to the Detroit Street home and continued to see Elaine.

On cross-examination, the complainant acknowledged that Elaine had said that she was married to defendant. However, at the time, it did not matter to complainant because he was not intimate with Elaine. The complainant admitted that he wrote a letter stating that "defendant had to go." However, he denied ever threatening defendant and indicated that "go" meant that defendant needed to stay away from the children and out of the couple's life. The complainant admitted that he was convicted of breaking and entering with intent to commit larceny. He testified that he selected the Detroit Street home with Elaine in December 2001, he was returned to prison on January 28, 2002, and he was paroled on the date of this shooting incident. Lastly, the complainant acknowledged that Elaine had sought a personal protection order against him.

Elaine testified that she had been married to defendant since May 9, 2000, but the couple had been separated "on and off." Elaine agreed to allow the complainant to use the Detroit Street address for parole purposes, but intended on taking him to her home for the limited purpose of collecting his belongings. Defendant lived at the Detroit Street home with Elaine, and the couple was trying to reconcile. She did not tell defendant that she was picking the complainant up from the parole office because she did not want any problems. Elaine was the mother of six children, and the complainant was the father of her oldest child.

At some point during the evening in question, there was a shooting at the Detroit Street home. However, Elaine denied the assertion that defendant committed the shooting and testified that she did not know who committed the shooting. Elaine could not recall telling police investigators that defendant was the shooter. Elaine testified only that she told a police investigator that defendant had hit her out of anger. When shown a statement contradicting her testimony, Elaine asserted that she did not give any such statement and the police must have obtained the “story” from the complainant. Elaine testified that she had “no problem coming to court” and telling the truth. She wanted the responsible party, the complainant, to accept the blame for the confrontation and the “things that he did.” Elaine insisted that the complainant promised to come to the home and retrieve his belongings without causing any trouble.

On cross-examination, Elaine testified that she became pregnant at the age of twelve with the complainant’s child in 1977. In June 2003, Elaine obtained a personal protection order against the complainant because of harassment, telephone calls, threats, and abuse toward her daughter. Later during the trial, Elaine was recalled to testify by defendant. She testified that when she picked the complainant up near the parole office, they immediately began to argue over who would drive. They argued again when the complainant did not proceed to drive to the Detroit Street home. The complainant said that he was driving to his mother’s home. Elaine was upset because he could not use his mother’s residence as his parole address and that was why she allowed him to use her address. The complainant began to drive fast. She jumped out of the car with Quetta, Shareka, and Whitney. The complainant frightened Elaine because he threatened to go to his mother’s home to get a gun. When presented with information in her medical charts indicating that Elaine reported defendant as the shooter, she denied giving any such statement to medical personnel, denied the need for any medical treatment by categorizing any wound as a “graze,” and testified that any such information must have come from the complainant.

Officer McLatcher testified that he responded to the Detroit Street address after reports that shots were fired. He encountered the complainant first, who reported that defendant had shot him in the left calf. The officer encountered three children who were present at a neighbor’s home, Quetta, Kenneth Thompkins, and Theresa Thompkins. He estimated that he spoke to the children within fifteen minutes of the shooting, and the children were agitated and excited when he spoke to them. The officer testified that the children corroborated the statement by the complainant. Specifically, that the complainant was chased around the home by defendant, who shot him with a shotgun. Quetta had hidden the gun and took the officer to its location. The officer admitted that he could not recall specifics of the conversations with the children, and he did not record any questions and answers in his report. The officer testified that his goal was to apprehend the shooter and pass information to the investigator who would conduct lengthy questions and answers with the witnesses. The officer testified that he had no incentive to falsify information.

Theresa Thompkins was Elaine’s daughter, defendant’s stepdaughter, and the blood relative of the complainant, her uncle. Theresa could not recall the shooting or speaking to police about the shooting. When shown a statement with her name on it, Theresa denied any statement and denied any report by her that defendant shot at her uncle. Theresa testified that she was not pressured to provide certain answers and denied any problems at home.

Quetta testified that the complainant was her father and Elaine was her mother. The complainant was to come to the home to take his stuff and leave. She was in the basement of the

home when she heard shooting upstairs. She heard defendant say, “give me the gun, don’t shoot me.” Quetta managed to the gun from defendant, the complainant, and Elaine. She took the gun and buried it in the snow in the backyard. Quetta denied speaking to police about the incident. She testified that she merely told an officer of the location of the gun. Quetta acknowledged that the situation at home was “weird” since the shooting, but Elaine and defendant had reconciled at the time of the incident. Quetta testified that the only person she saw in control of the gun on December 2, 2002 was the complainant, her father.

Kenneth Thompkins testified that he was fourteen years of age and in the ninth grade. He was living at the Detroit Street address on December 2, 2002. On that date, he saw the complainant, his uncle by blood, bring a gun to the home at approximately 3:00 p.m. He was in the home when he heard a shot fired and heard three additional shots as he fled the home. Kenneth went to a friend’s home down the street, but returned home approximately two minutes later. He denied providing any statement to police that defendant shot the complainant. Rather, Kenneth testified that he saw the complainant grab the gun from the side where the microwave used to be and shot at defendant, Kenneth’s stepfather. Kenneth fled after the first shot. He did not tell anyone about seeing the complainant with the gun earlier in the day. When police tried to ask him questions, he told them that they could not speak to him without a parent present.

Defendant testified that the complainant telephoned his Detroit Street home on December 2, 2002. The complainant had made several threats. Defendant left the home in the a.m. and arrived back at home at approximately 6:30 or 6:45 p.m. When he entered the home, the children were not there to greet him, which was unusual. Defendant entered the kitchen and saw the complainant. Defendant did not know that the complainant would be at the home and felt “set up” by Elaine. Elaine had not told defendant that she had agreed to allow the complainant to use the home as his parole address. Defendant approached the complainant and told him to leave. The complainant then reached to the side and pulled a shotgun. As the complainant raised the gun, defendant lunged for it. The men struggled with the gun, and it fired several times during the struggle. Defendant did not know how Elaine got shot, but it must have occurred when she tried to intervene in the “tussling.” Quetta managed to get the gun, and the complainant threatened to retrieve another gun from the car. Defendant and Elaine fled the home, and the complainant ran after them. Defendant did not alert police to the incident based on a request by Elaine, his wife. Elaine wanted to protect the father of her child. Defendant returned to the home within a few days of the shooting and did not know that there was a warrant for his arrest. Defendant could not explain why there were gun shot holes throughout the home when he reported that the entire incident occurred in the kitchen.

Defendant was charged with assault with intent to do great bodily harm less than murder involving the complainant, MCL 750.84, assault with a dangerous weapon (felonious assault) involving the complainant, MCL 750.82, felonious assault of John Young, Jr., an occupant of the home during the shooting, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. At the commencement of trial, it was stipulated that defendant had been convicted of an unspecified felony on September 27, 1999. Defendant was convicted of felonious assault involving the complainant and the two firearm charges, but acquitted of the assault with intent to commit murder charge and the felonious assault of occupant charge.

Defendant first alleges that the trial court erred by admitting the hearsay statements of the children based on the excited utterance rule where the children were subject to the influence of

the only present adult, the complainant. We disagree. The decision to admit evidence is reviewed for an abuse of discretion. *People v Washington*, 468 Mich 667, 670; 664 NW2d 203 (2003). An excited utterance is defined as “a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” MRE 803(2). There are two requirements for admission of an excited utterance: (1) that there be a startling event, and (2) that the resulting statement be made while under the excitement caused by the event. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). MRE 803(2) permits the admission of otherwise excludable hearsay testimony because of the perception that a person who is still experiencing the excitement of an external startling event will not have the reflective capacity to fabricate such that any utterance will be spontaneous and trustworthy. *Id.*

Based upon the record, the trial court did not abuse its discretion by allowing the statements under the excited utterance rule. *Washington, supra*. The requirements for admission were satisfied because the shooting was a startling event, and the statements were made within fifteen minutes of experiencing the shooting. *Smith, supra*. The defense contends that the children had the capacity to fabricate because the complainant was the only adult present and faced the stress of returning him to prison less than twelve hours of his parole or implicating their stepfather. However, the focus of the excited utterance rule is not strictly the time to fabricate, but the possibility for conscious reflection. *Smith, supra* at 551. There is no express time limit for excited utterances, and physical factors, that include shock, unconsciousness or pain, may extend the period in which the risk of fabrication is reduced to an acceptable minimum. *Smith, supra* at 551-552. The trial court’s determination that the declarant was still experiencing the stress of the event is given wide discretion. *Smith, supra* at 552.

The record does not support the defense contention, that the children fabricated based on the complainant’s presence. The police officer testified that he spoke to the children within fifteen minutes of the shooting at the home of the neighbor. Moreover, when the children testified at trial, they did not state that they fabricated the initial statements based on the physical presence of the complainant or the pressure to blame their blood relative, the complainant, or defendant, their stepfather. Rather, the children completely denied making any statements at all to the police. Accordingly, this contention is without merit.

Defendant next alleges that it was error to admit Elaine’s medical records and to allow police officers to testify regarding Elaine’s statements to police.³ We disagree. The trial court’s decision to admit this evidence is reviewed for an abuse of discretion. *Washington, supra*. Review of the brief on appeal reveals that defendant’s challenge to this evidence is based on its reliability in light of the fact that the complainant was present with Elaine and therefore was “lurking in the background.” Again, Elaine did not testify that she fabricated any statement implicating defendant, her husband, based on the presence of the complainant. Rather, Elaine

³ The defense contends that the prosecutor did not timely provide the discovery of the medical records. The prosecutor asserted that the defense was on notice of the intent to submit the records and that the records were promptly provided after the prosecutor received them. The trial court held that the defense could have an extension of time to examine the records. Under the circumstances, this challenge is without merit.

denied making any statements to police or medical personnel implicating defendant, and any information to that effect must have been conveyed by the complainant. Accordingly, we cannot conclude that the admission of this evidence was an abuse of discretion. *Washington, supra.*⁴

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

⁴ Even if we had concluded that the admission of this evidence was improper on the basis alleged, the defense failed to address whether the evidence was proper impeachment with a prior inconsistent statement.